



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/171635

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 23, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a telephone hearing was held on February 17, 2016.

The issue for determination is whether the Department may intercept the petitioner's income tax return to recover an overpayment of FoodShare.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Public Assistance Collection Unit  
PO Box 8938  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of NA.
2. On August 20, 2015, the agency sent the Petitioner Notifications of FoodShare Overissuance, Claim Numbers [REDACTED] and [REDACTED], indicating that her household was overissued

FoodShare benefits in the amount of \$2,597.97 for the period of June-October, 2011, and July-May, 2013. (Exhibit 2, p.4)

3. The agency sent Petitioner a repayment agreement, and three dunning notices (reminders about the debt) dated on October 5, 2015, November 3, 2015, and December 2, 2015. (Exhibit 2, pp.4-6)
4. On January 15, 2016, the agency sent the Petitioner a notice of State Tax Intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt." (Exhibit 2, p.1)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 23, 2016. (Exhibit 1)

### **DISCUSSION**

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal because she does not think he should be held liable for the overpayment underlying the tax intercept, because the process was unfair and she did nothing wrong.

With regard to the underlying overpayment, the Petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

....

7 CFR 273.15(g)

Petitioner's January 23, 2016, appeal was filed well beyond 90-days from the date of the August 20, 2015 overpayment notices. As such, there is no jurisdiction to consider the merits of his appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner filed this appeal to argue that it is unfair that the agency is recovering from her because she did nothing wrong. The respondent asserts that petitioner utilized her FS benefits to pay off credit accumulated at [REDACTED]. As indicated previously, however, I no longer retain jurisdiction over the underlying overpayment. The problem is that petitioner did not appeal within 90 days of the August 20, 2016, overpayment notices. State law provides that the Division of Hearings and Appeals now cannot hear the issue of who is liable for the claim.

Petitioner has not established any error by the respondent in utilizing the tax intercept process to recoup the established overpayment.

### **CONCLUSIONS OF LAW**

1. The Division of Hearings and Appeals cannot hear the merits of an overpayment claim following notice of a tax intercept when the person did not appeal the original overpayment notice timely.
2. The PACU may utilize a tax intercept to recover the claim in this case.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of March, 2016

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 14, 2016.

Public Assistance Collection Unit  
Public Assistance Collection Unit